

BEFORE THE DEPARTMENT OF ADMINISTRATION  
OF THE STATE OF MONTANA

In the matter of the amendment of ARM ) NOTICE OF PUBLIC HEARING ON  
2.5.502 and adoption of New Rule I ) PROPOSED AMENDMENT AND  
pertaining to contract security ) ADOPTION

TO: All Concerned Persons

1. On November 26, 2008, at 11:00 a.m., a public hearing will be held in Room 165 of the Mitchell Building, 125 North Sanders, Helena, Montana, to consider the proposed amendment and adoption of the above-stated rules.

2. The Department of Administration will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process or need an alternative accessible format of this notice. If you require an accommodation, contact the State Procurement Bureau no later than 5:00 p.m. on November 17, 2008, to advise us of the nature of the accommodation that you need. Please contact Gretchen Bingman, State Procurement Bureau, P.O. Box 200135, 125 North Roberts, Helena, MT 59620-0135; telephone (406) 444-7210; Montana Relay Service 711; facsimile (406) 444-2529; e-mail to gbingman@mt.gov.

3. The rule proposed to be amended provides as follows, stricken matter interlined, new matter underlined:

2.5.502 BID, PROPOSAL, AND CONTRACT PERFORMANCE SECURITY

(1) and (2) remain the same.

(3) Facsimile, electronic, or photocopy copies of bid or contract security are not acceptable.

(4) through (7)(g) remain the same.

(8) ~~All contract performance security, except bonds, will be returned to the successful bidder or offeror upon completion of the contract, or at the discretion of the procurement official as documented to assure contract completion, or warranty period as declared within the contract.~~ The division shall timely return to the contractor all contract performance security, except bonds, following the division's receipt of the notice described in [NEW RULE I].

AUTH: 18-4-221, 18-4-312, MCA

IMP: 18-1-201, 18-4-312, MCA

4. The proposed new rule provides as follows:

NEW RULE I COMPLETION NOTIFICATION FOR CONTRACTS WITH PERFORMANCE SECURITY (1) Within 30 days of the expiration of a contract requiring contract security, the contracting agency shall provide written notification stating that:

(a) the contract has been successfully performed and, if a warranty period is specified in the contract, that no claims are pending under the warranty; and

(b) the agency waives all rights and claims to the contract security.

(2) If the contract was established through the State Procurement Bureau, the notification shall be provided to the division. If the contract was established within an agency's delegated authority, the notification shall be provided to the agency's contracting office.

AUTH: 18-4-221, 18-4-312, MCA

IMP: 18-4-312, MCA

STATEMENT OF REASONABLE NECESSITY: Contract performance security is required for certain contracts entered into by the state of Montana. For contracts established through the State Procurement Bureau (SPB) for other state agencies, such security is held by SPB until completion of the contract. A recent audit of SPB records identified two instances in which contract performance security was held too long beyond the expiration of the contracts. It is necessary for the department to obligate agencies that require performance security in a contract to notify SPB of the successful completion of such a contract so that the security being held can be returned to the contractor in a timely manner. In addition, if an agency, under its delegated authority, requires contract performance security, the same notification of contract completion must be given to its respective contracting office for the same reason.

The amendment of ARM 2.5.502 and the adoption of NEW RULE I are necessary to clarify under what conditions contract security will be returned to a contractor, and how and when agencies must notify the Department of Administration that such return is permissible.

5. Concerned persons may present their data, views, or arguments, either orally or in writing, at the hearing. Written data, views, or arguments may also be submitted to Gretchen Bingman, State Procurement Bureau, P.O. Box 200135, 125 North Roberts, Helena, MT 59620-0135; telephone (406) 444-7210; facsimile (406) 444-2529; e-mail to [gbingman@mt.gov](mailto:gbingman@mt.gov), and must be received no later than 5:00 p.m., December 5, 2008.

6. Brad Sanders, Bureau Chief, State Procurement Bureau, has been designated to preside over and conduct the hearing.

7. An electronic copy of this proposal notice is available through the department's web site at <http://doa.mt.gov/administrativerules.asp>. The department strives to make the electronic copy of the notice conform to the official version of the notice, as printed in the Montana Administrative Register, but advises all concerned persons that if a discrepancy exists between the official printed text of the notice and the electronic version of the notice, only the official printed text will be considered. In addition, although the department works to keep its web site accessible at all times, concerned persons should be aware that the web site may be unavailable during

some periods, due to system maintenance or technical problems.

8. The State Procurement Bureau maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this office. Persons who wish to have their name added to the mailing list shall make a written request that includes the name and mailing address or e-mail address of the person to receive notices and specifies that the person wishes to receive notices regarding State Procurement Bureau and/or Property and Supply Bureau rulemaking actions. Such written requests may be mailed or delivered to Gretchen Bingman, State Procurement Bureau, P.O. Box 200135, 125 North Roberts, Helena, MT 59620-0135; faxed to the office at (406) 444-2529; e-mailed to gbingman@mt.gov; or may be made by completing a request form at any rules hearing held by the department.

9. The bill sponsor notice requirements of 2-4-302, MCA, do not apply.

By: /s/ Janet R. Kelly  
Janet R. Kelly, Director  
Department of Administration

By: /s/ Michael P. Manion  
Michael P. Manion, Rule Reviewer  
Department of Administration

Certified to the Secretary of State October 27, 2008.